

EXHIBIT 9

- GOTZ LEHSTEN -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

BONNY GAS TRANSPORT LIMITED, as
owner of the LNG FINIMA (IMO
No.7702401),

Plaintiff,

-against-

O.W. BUNKER GERMANY GMBH, NUSTAR
TERMINALS MARINE SERVICES, N.V.,
NUSTAR ENERGY SERVICES, INC.,
ING BANK N.V.,

Defendants.

-----X

HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

-against-

U.S. OIL TRADING LLC, O.W. BUNKER
GERMANY GMBH, O.W. BUNKER & TRADING
A/S, ING BANK N.V., CREDIT AGRICOLE
S.A.,

Defendants.

-----X

HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

-against-

O'ROURKE MARINE SERVICES, L.P.,
L.L.P., O.W. BUNKER GERMANY GMBH,
O.W. BUNKER USA, INC., ING BANK
N.V.,

Defendants.

-----X

February 23, 2016

9:05 a.m.

DEPOSITION OF GOTZ LEHSTEN

CASE NO.
14-cv-9542 (VEC)

CASE NO.
14-cv-9949 (VEC)

CASE NO.
14-cv-10027 (VEC)

<p style="text-align: right;">Page 2</p> <p>1 - GOTZ LEHSTEN - 2) 3 UNITED STATES DISTRICT COURT) 4 SOUTHERN DISTRICT OF NEW YORK) 5 -----x) 6 U.S. OIL TRADING LLC,) CASE NO. 7) 15-cv-6718 (VEC) 8 Plaintiff,) 9) 10 - against -) 11) 12 M/V VIENNA EXPRESS, her tackle,) 13 boilers, apparel, furniture,) 14 engines, appurtenances, etc.,) 15 in rem: M/V SOFIA EXPRESS, her) 16 tackle, boilers, apparel,) 17 furniture, engines, appurtenances,) 18 etc., in rem,) 19) 20 Defendants.) 21 -----x) 22 HAPAG-LLOYD AKTIENGESellschaft, as) CASE NO. 23 Claimant to the M/V VIENNA EXPRESS,) 24) 25 Counter-Claimant and) Third-Party Plaintiff,))) - against -))) U.S. OIL TRADING LLC,))) Counter-Defendant and))) O.W. BUNKER GERMANY GMBH, O.W.) BUNKER TRADING A/S, ING BANK N.V.,) and CREDIT AGRICOLE CORPORATE AND) INVESTMENT BANK, a division or arm) of CREDIT AGRICOLE S.A.,) Third-Party Defendant. -----x DATE: February 23, 2016 TIME: 9:05 a.m. 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 - GOTZ LEHSTEN - 2 A P P E A R A N C E S 3 KIESLICH & PARTNER RECHTSANWALTE 4 Attorneys for the Witness 5 Moorfuhrweg 15 6 22301 Hamburg, Germany 7 BY: MARTIN KIESLICH, ESQ. (via teleconference) 8 SEWARD & KISSEL LLP 9 Attorneys for Defendant ING Bank N.V., 10 as Security Agent: 11 One Battery Park Plaza 12 New York, New York 10004 13 BY: BRIAN P. MALONEY, ESQ. 14 LAURA E. MILLER, ESQ. 15 FREEHILL HOGAN & MAHAR LLP 16 Attorneys for Hapag-Lloyd Aktiengesellschaft 17 80 Pine Street 18 New York, New York 10005 19 BY: MICHAEL FERNANDEZ, ESQ. 20 MICHAEL DEHART, ESQ. 21 22 CLYDE & CO. US LLP 23 Attorneys for U.S. Oil Trading LLC 24 405 Lexington Avenue 25 New York, New York 10174 BY: CASEY D. BURLAGE, ESQ. McDERMOTT WILL & EMERY Attorneys for O.W. Bunker Germany GMBH 340 Madison Avenue New York, New York 10173 BY: DARREN AZMAN, ESQ. MICHAEL GALEN, ESQ. ULRIKE WITT, ESQ. (via teleconference) -and- HILL RIVKINS LLP 45 Broadway, Suite 1500 New York, New York 10006 BY: JUSTIN M. HEILIG, ESQ. (via teleconference) SIMMS SHOWERS LLP Attorneys for O'Rourke Marine Services L.P. 201 International Circle, Suite 250 Hunt Valley, Maryland 21030 BY: MARIOS J. MONOPOLIS, ESQ. (via teleconference)</p>
<p style="text-align: right;">Page 3</p> <p>1 - GOTZ LEHSTEN - 2 TELECONFERENCE DEPOSITION OF GOTZ 3 LEHSTEN, a 30(b)(6) witness, held at the offices of 4 McDermott Will & Emery, 340 Madison Avenue, New York, 5 New York, pursuant to Notice, before Hope Menaker, a 6 Shorthand Reporter and Notary Public of the State 7 of New York. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 - GOTZ LEHSTEN - 2 APPEARANCES: (cont'd) 3 BLANK ROME LLP 4 Attorneys for NuStar 5 717 Texas Avenue, Suite 1400 6 Houston, Texas 77002 7 BY: KEITH B. LETOURNEAU, ESQ. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>ALSO PRESENT: Ms. A.J. Elterman, Interpreter</p>

<p style="text-align: right;">Page 34</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 the executive vice presidents, the CEO, the CFO</p> <p>3 and so on, they were what we call -- what you call</p> <p>4 group management within the head office.</p> <p>5 That would have been the Danish</p> <p>6 entity; is that correct?</p> <p>7 MR. HEILIG: Same objection.</p> <p>8 A. No, no. It's not the same company.</p> <p>9 I think I'm not -- it's getting very complicated</p> <p>10 now and we probably need hours to explain the</p> <p>11 structure of the company.</p> <p>12 O.W. Bunker & Trading of course also</p> <p>13 had reselling business in Denmark. They had a</p> <p>14 unit in Copenhagen, and they had a unit in</p> <p>15 Warborg. That was part of my responsibility, but</p> <p>16 O.W. Bunker & Trading was not the O.W. Bunker</p> <p>17 Group.</p> <p>18 Q. So, is it fair to say that with</p> <p>19 regard to your area, the reselling area, being an</p> <p>20 executive vice president you had that</p> <p>21 responsibility throughout the group, meaning all</p> <p>22 the ó</p> <p>23 A. All reselling activities -- all</p> <p>24 reselling activities in the group.</p> <p>25 Q. The group then consisted ó</p>	<p style="text-align: right;">Page 36</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 (Whereupon, Exhibit 5 was marked at</p> <p>3 this time.)</p> <p>4 MR. FERNANDEZ: We have marked for</p> <p>5 purposes of identification Exhibit 5 which is</p> <p>6 the Hapag notice of the Rule 30(b)(6)</p> <p>7 deposition of O.W. Bunker Germany. That same</p> <p>8 notice has been served and applies to all</p> <p>9 three cases that are currently before Judge</p> <p>10 Caproni in the Southern District of New York.</p> <p>11 MR. HEILIG: I just wanted to show</p> <p>12 you the document that he's talking about.</p> <p>13 MR. FERNANDEZ: Are you guys ready to</p> <p>14 go?</p> <p>15 MR. HEILIG: Ready.</p> <p>16 Q. Mr. Lehsten, just generally, can you</p> <p>17 describe for us what the business of O.W. was</p> <p>18 prior to its insolvency?</p> <p>19 MR. HEILIG: Objection. Are you</p> <p>20 talking O.W. Germany? You just said O.W.</p> <p>21 Q. The O.W. group and then we're going</p> <p>22 to talk about O.W. Germany.</p> <p>23 A. Okay. I'm a bit surprised about the</p> <p>24 question. O.W. Bunker Group, as I mentioned</p> <p>25 before, O.W. Bunker was one of the biggest players</p>
<p style="text-align: right;">Page 35</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 A. O.W. Bunker.</p> <p>3 Q. That group starting in 2000 -- 2000</p> <p>4 consisted of how many different entities</p> <p>5 worldwide?</p> <p>6 A. I don't have an exact number.</p> <p>7 Q. Just roughly?</p> <p>8 A. But how many -- somewhere between 25</p> <p>9 and 30 to my best knowledge.</p> <p>10 Q. In 2014, at the time of the</p> <p>11 collapse ó</p> <p>12 A. Sorry. Sorry. You asked for the</p> <p>13 number at 2000.</p> <p>14 Q. Yes, sir. Sorry. Sorry.</p> <p>15 A. That probably has been something</p> <p>16 around -- I don't know -- eight to ten. The</p> <p>17 number I just gave before the number in 2014.</p> <p>18 Q. Okay. I understand. Thank you.</p> <p>19 MR. FERNANDEZ: Can we take make like</p> <p>20 a five-minute break? Can we take a</p> <p>21 five-minute break, guys?</p> <p>22 THE WITNESS: That's fine. Thank</p> <p>23 you.</p> <p>24 (Whereupon, there was a brief recess</p> <p>25 in the proceedings.)</p>	<p style="text-align: right;">Page 37</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 in the global bunker market.</p> <p>3 They provided all kind of services to</p> <p>4 the bunker industry, mainly on the physical side</p> <p>5 where they were acting as physical suppliers in</p> <p>6 various areas, and secondly, the reselling</p> <p>7 business where they have sold deliveries to</p> <p>8 clients and bought from physical suppliers ó</p> <p>9 third-party physical suppliers to provide the</p> <p>10 delivery.</p> <p>11 That was the two main business</p> <p>12 activities. So that was also, as I mentioned,</p> <p>13 cargo trading for the supplier or resupplier,</p> <p>14 replenishment of their own physical division, but</p> <p>15 also trading cargo for third party. Another area</p> <p>16 was hedging or risk management department selling</p> <p>17 risk management products to clients but also to</p> <p>18 suppliers.</p> <p>19 Q. Out of those general categories</p> <p>20 insofar as O.W. Germany was concerned, what</p> <p>21 responsibilities or what involvement did O.W.</p> <p>22 Germany have in the marketplace?</p> <p>23 MR. HEILIG: Objection to form.</p> <p>24 Go ahead.</p> <p>25 A. O.W. Germany had two divisions, one</p>

<p style="text-align: right;">Page 38</p> <p>1 - GOTZ LEHSTEN - 2 reselling division and one physical division. The 3 physical division was handling providing, offering 4 physical supplies in all German ports, while the 5 reselling division was mainly responsible to find 6 local clients in Germany, but also in northern 7 Europe and also to handle all inquiries from the 8 rest of the group for Germany. 9 Q. Okay. Insofar as O.W. Germany's 10 interaction with my client, Hapag-Lloyd, would 11 you -- how would you describe the services that 12 O.W. Germany provided to Hapag? 13 A. O.W. -- Hapag-Lloyd and O.W. Bunker 14 Germany had two main business. One was the 15 contract business. One was spot business for ó 16 ja. 17 MR. HEILIG: Mike, just a brief 18 objection. We've designated Mr. Gronenberg 19 to testify about Topic Number 1 so just to 20 clarify that. He's our designee under the 21 rules for that subject. 22 Q. Is it fair to say that O.W. Germany 23 acted as traders in the bunker market? 24 MR. LETOURNEAU: Objection to form. 25 A. Basically it's a definition.</p>	<p style="text-align: right;">Page 40</p> <p>1 - GOTZ LEHSTEN - 2 deposition topic. 3 A. The only part I have been involved 4 when it comes to credit lines was that I have been 5 part of the credit committee in the group, 6 deciding about credit given to customers. 7 MR. FERNANDEZ: Just off the record. 8 (Whereupon, a brief discussion was 9 held off record.) 10 Q. Sir, are you aware in your capacity 11 as executive vice president, and whatever other 12 roles you were appointed to as of December of 13 2013, that the O.W. group had entered into a 14 security agreement with what I'll describe as a 15 consortium of banks, but I'll refer to it as the 16 ING Security Agreement. 17 MR. MALONEY: Objection to form. 18 MR. HEILIG: Object to form. 19 A. Of course, to some extent, I have 20 been informed by the CFO and Treasury at that time 21 that they have been in negotiations with the 22 bank's syndicate but that -- those informations 23 were -- I didn't have very deep insight into those 24 discussions; only that the agreement has been 25 fixed in a certain time. But don't ask me about</p>
<p style="text-align: right;">Page 39</p> <p>1 - GOTZ LEHSTEN - 2 Basically we call ourselves resellers. Others may 3 call it trading. Resellers is by definition 4 basically where you value X in your own name, 5 where you sell it to somebody in your own name and 6 you purchase from a third party for your own 7 account. 8 So, many different words for bunker 9 traders, right? In U.S., I think they're called 10 marketers, whatever that means. I have no clue. 11 Q. Okay. But the bottom line, whether 12 you call it a reseller or trader, you were -- O.W. 13 Germany was acting in its own name and it was 14 purchasing bunkers for its own account? 15 A. Yes. 16 MR. HEILIG: Objection. Form. 17 MR. FERNANDEZ: I'm trying to move it 18 along. 19 Q. I want to talk to you next about the 20 credit lines that the O.W. Bunker Group had in 21 place at various points in time. Is that 22 something you're familiar with, credit lines from 23 outside investors? 24 MR. HEILIG: Note my objection 25 pursuant to our written objection to the</p>	<p style="text-align: right;">Page 41</p> <p>1 - GOTZ LEHSTEN - 2 details of particulars about that agreement. 3 Q. Okay. Do you know if the O.W. Bunker 4 Group prior to 2013 had any type of credit or 5 security agreement that was in place by any 6 lending institution? This was -- this is prior to 7 2013. 8 MR. HEILIG: Object to form. 9 A. I couldn't -- I can't reply. 10 Q. You don't know? 11 A. I have never been involved in the 12 finance issues of the group. 13 Q. All right. But you were in charge of 14 the trading or the reselling and the profits and 15 losses generated in that division; is that 16 correct? 17 MR. HEILIG: Object to form. 18 A. I don't understand your question. 19 Q. I'm just trying to understand what 20 information you would have provided and what 21 involvement you would have had with regard to a 22 decision by the O.W. Bunker Group to go out and 23 seek a credit line. 24 MR. MALONEY: Objection to form. 25 Q. Let me just back up a little bit.</p>

<p style="text-align: right;">Page 82</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 So it's a reseller's day-to-day business that they</p> <p>3 take business in and then based on market</p> <p>4 circumstances, believe or whatever reason the</p> <p>5 market is soft or whatever to get a better buying</p> <p>6 price from the distributor -- from the local</p> <p>7 distributor.</p> <p>8 That's part of reseller's business,</p> <p>9 to sell to the customers first and then later on</p> <p>10 buy best possible from the distributor.</p> <p>11 Q. Mr. Lehsten, would you agree with me,</p> <p>12 sir, that this margin information that's being</p> <p>13 shared between O.W. Germany and O.W. U.S.A. they</p> <p>14 are sharing margin information?</p> <p>15 A. Yes, they do, because it was</p> <p>16 according to the terms and policy that they have</p> <p>17 an open book principle.</p> <p>18 Q. If these two companies were acting as</p> <p>19 separate companies doing an arm's-length</p> <p>20 transaction, you would agree with me that they</p> <p>21 would never share margin information, right?</p> <p>22 MR. FERNANDEZ: Objection.</p> <p>23 MR. HEILIG: Objection to form.</p> <p>24 A. It was difficult to hide because they</p> <p>25 had access to the same IT software.</p>	<p style="text-align: right;">Page 84</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 To the best you can answer the</p> <p>3 questions, the witness can proceed.</p> <p>4 A. We had a business model that we had</p> <p>5 an open book principle where the units have shared</p> <p>6 margins. That how it is. So ó</p> <p>7 Q. If O.W. U.S.A. had not been part of</p> <p>8 the O.W. Bunker Group, you would agree with me</p> <p>9 that you would never have shared that margin with</p> <p>10 them.</p> <p>11 Isn't that true?</p> <p>12 MR. HEILIG: Objection to form.</p> <p>13 MR. FERNANDEZ: Objection. Form.</p> <p>14 A. That question is too hypothetical. I</p> <p>15 don't want to answer that one.</p> <p>16 Q. Are you not -- are you refusing to</p> <p>17 answer my question, sir?</p> <p>18 A. I'm not refusing because I simply</p> <p>19 don't know, because that's the way we worked</p> <p>20 internally at O.W. Bunker.</p> <p>21 Q. I'm not asking internally. I'm</p> <p>22 asking an arm's-length transaction with a third</p> <p>23 party with whom you're doing business, you would</p> <p>24 never share your margin information with such a</p> <p>25 party, would you, sir?</p>
<p style="text-align: right;">Page 83</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 Q. But if they were acting in an</p> <p>3 arm's-length transaction between each other, O.W.</p> <p>4 U.S.A. and O.W. Germany would never share their</p> <p>5 margins, would they, sir?</p> <p>6 MR. HEILIG: Objection.</p> <p>7 MR. FERNANDEZ: Objection to form.</p> <p>8 Q. They did in this case. But if they</p> <p>9 were acting in an arm's-length transaction, you</p> <p>10 would agree with me they would never share their</p> <p>11 margins.</p> <p>12 MR. FERNANDEZ: Objection to form.</p> <p>13 MR. HEILIG: Same objection.</p> <p>14 You can answer.</p> <p>15 A. Sorry. I couldn't get you. That's</p> <p>16 very theoretical question, isn't it?</p> <p>17 Q. Well, no, it's not. It's how you do</p> <p>18 business with parties with whom you engage in an</p> <p>19 arm's-length transaction.</p> <p>20 You don't share your margins with</p> <p>21 parties with whom you maintain arm's-length</p> <p>22 transactions, do you?</p> <p>23 MR. FERNANDEZ: Objection.</p> <p>24 MR. HEILIG: I'll object. This</p> <p>25 question has become argumentative.</p>	<p style="text-align: right;">Page 85</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 MR. FERNANDEZ: Objection.</p> <p>3 MR. HEILIG: Objection.</p> <p>4 A. You asked about my opinion.</p> <p>5 Q. No. I'm asking you about your</p> <p>6 business practices.</p> <p>7 Are you telling me that you would</p> <p>8 share your margins with a third party with whom</p> <p>9 you're not affiliated?</p> <p>10 MR. FERNANDEZ: Objection to form.</p> <p>11 MR. HEILIG: Objection.</p> <p>12 A. We probably had seen that even out in</p> <p>13 the bunker industry with companies that are not</p> <p>14 part of the group that there's sort of an open</p> <p>15 book principle.</p> <p>16 Q. Is it your testimony that O.W. as a</p> <p>17 business practice would share its margins with</p> <p>18 parties who are not affiliated with O.W.?</p> <p>19 MR. HEILIG: Objection. Form.</p> <p>20 MR. FERNANDEZ: Objection to form.</p> <p>21 A. I don't know where we're going here.</p> <p>22 Sorry. I don't understand.</p> <p>23 MR. HEILIG: To the extent you can</p> <p>24 answer the question, you can proceed.</p> <p>25 A. Of course I mean all kind of</p>

<p style="text-align: right;">Page 94</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 MR. BURLAGE: I'll follow up after</p> <p>3 you are done, Marios.</p> <p>4 EXAMINATION BY MR. MONOPOLIS:</p> <p>5 Q. My name is Marios Monopolis. I'm an</p> <p>6 attorney for O'Rourke Marine Services, and my</p> <p>7 questions are in reference to the case filed by</p> <p>8 Hapag-Lloyd against O'Rourke, O.W. Germany, O.W.</p> <p>9 U.S.A. and ING Bank. I presume given your earlier</p> <p>10 testimony, are you familiar with that case</p> <p>11 generally?</p> <p>12 A. I think I have seen it somewhere in</p> <p>13 the notes, yes.</p> <p>14 Q. Are you familiar with the role of</p> <p>15 O.W. Germany played with respect to the physical</p> <p>16 supply or the general supply of the vessels the</p> <p>17 DERBY D and the SYDNEY EXPRESS?</p> <p>18 A. No. It's the first time I hear those</p> <p>19 vessels' names.</p> <p>20 Q. Are you familiar with the role O.W.</p> <p>21 Germany played with the supply of bunkers to any</p> <p>22 Hapag-Lloyd vessels?</p> <p>23 A. No. As I mentioned earlier, when it</p> <p>24 comes to day-to-day business and reselling</p> <p>25 day-to-day business Hapag-Lloyd, then it's best to</p>	<p style="text-align: right;">Page 96</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 and so this might go to Mr. Gronenberg's testimony</p> <p>3 tomorrow, but I'm looking at Topic 12, "the</p> <p>4 understanding by O.W. Germany of the role that</p> <p>5 O.W. Germany played with respect to the supply of</p> <p>6 bunkers to the vessels."</p> <p>7 Mr. Lehsten, is it your testimony</p> <p>8 that you don't have an understanding of what role</p> <p>9 O.W. Germany played?</p> <p>10 MR. HEILIG: Objection to form.</p> <p>11 A. Okay. I think that you need to</p> <p>12 clarify which part you believe I said that I do</p> <p>13 Q. That you didn't have an</p> <p>14 understanding?</p> <p>15 A. Yes.</p> <p>16 Q. I asked you about the names of the</p> <p>17 vessels and you told me, I believe you told me do</p> <p>18 please correct me if I'm wrong -- you didn't know</p> <p>19 what the vessels were.</p> <p>20 A. No. These ships' names are not</p> <p>21 familiar to me and so if you say it's</p> <p>22 Hapag-Lloyd's two ships, I then, of course, I know</p> <p>23 that O.W. Bunker Germany did sales to Hapag-Lloyd</p> <p>24 and explained to you in which way we have handled</p> <p>25 those transactions.</p>
<p style="text-align: right;">Page 95</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 talk to Mr. Gronenberg. I have nothing to do with</p> <p>3 day-to-day reselling business and of O.W. Bunker</p> <p>4 Germany.</p> <p>5 Q. But O.W. Germany was involved on some</p> <p>6 level with the -- with the supply to the DERBY D</p> <p>7 and the SYDNEY EXPRESS, wasn't it?</p> <p>8 MR. HEILIG: Object to form.</p> <p>9 You can answer if you know.</p> <p>10 A. I cannot answer that question. I</p> <p>11 mean if it's to who belongs that vessel. Is it</p> <p>12 Hapag-Lloyd vessel?</p> <p>13 Q. Yes. Those vessels were chartered</p> <p>14 by do</p> <p>15 A. Okay. Then I can say that if O.W.</p> <p>16 Bunker Germany did the sales to Hapag-Lloyd and if</p> <p>17 it's a delivery in the U.S., then they have done</p> <p>18 the purchase through O.W. Bunker Houston.</p> <p>19 Q. O.W. Bunker Houston, is that O.W.</p> <p>20 U.S.A. or is that another O.W. entity based in the</p> <p>21 U.S.?</p> <p>22 A. O.W. Bunker Houston was what we</p> <p>23 called the sourcing center or purchase center for</p> <p>24 all U.S. ports.</p> <p>25 Q. I apologize that this is repetitive</p>	<p style="text-align: right;">Page 97</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 Whether those ships have been</p> <p>3 involved, I don't know and suggest you ask</p> <p>4 Mr. Gronenberg.</p> <p>5 There have been probably many, many</p> <p>6 involved every day from Hapag-Lloyd and different</p> <p>7 other customers.</p> <p>8 Q. Okay. Would you say, taking into</p> <p>9 account your response just now, would you say that</p> <p>10 O.W. Germany likely played the same role with</p> <p>11 respect to the two vessels I've identified, the</p> <p>12 DERBY D and the SYDNEY EXPRESS, that it played</p> <p>13 with the other vessels implicated in today's</p> <p>14 deposition?</p> <p>15 MR. FERNANDEZ: Objection.</p> <p>16 MR. HEILIG: Objection to form.</p> <p>17 MR. FERNANDEZ: Objection to form.</p> <p>18 Lack of foundation. Calls for speculation.</p> <p>19 A. The role of a reseller is basically</p> <p>20 always the same as I understood your question</p> <p>21 correctly.</p> <p>22 Q. Okay.</p> <p>23 MR. MONOPOLIS: That's -- I think</p> <p>24 that's it for O'Rourke, but like the others,</p> <p>25 I'm going to reserve our rights with respect</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 110</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 global sales director.</p> <p>3 Q. About what time did all of those</p> <p>4 events you just described take place?</p> <p>5 A. Those tendering could take a month or</p> <p>6 two.</p> <p>7 Q. Understood. My question wasn't about</p> <p>8 the duration of the negotiations. It was when</p> <p>9 they took place.</p> <p>10 Was it in, for example, 2013/14?</p> <p>11 When did those negotiations take place?</p> <p>12 A. That's why I tried to find a date</p> <p>13 here on the contract, and the negotiations for the</p> <p>14 following year were normally taking place in the</p> <p>15 first quarter of the year before.</p> <p>16 Q. Before what?</p> <p>17 A. For contracts. As I mentioned</p> <p>18 earlier, there were two kind of businesses.</p> <p>19 Hapag-Lloyd, there was a contract business where</p> <p>20 we entered into supply contracts with Hapag-Lloyd</p> <p>21 in different ports and there was the so-called</p> <p>22 spot business where basically we offered on their</p> <p>23 specific inquiries with deliveries, the shortened</p> <p>24 orders for the next week or the week after.</p> <p>25 Q. Understood.</p>	<p style="text-align: right;">Page 112</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 in Antwerp or Rotterdam from other ports</p> <p>3 worldwide?</p> <p>4 A. The reason, it's actually very simple</p> <p>5 issue here. When they take the low sulphur fuel,</p> <p>6 for example, in '14 which they only had to use in</p> <p>7 certain so-called SECA areas -- areas SECA. You</p> <p>8 are familiar with SECA?</p> <p>9 Q. Emission control areas?</p> <p>10 A. Yes, exactly. In those areas, you</p> <p>11 have to use low sulphur fuel oil. So if you take</p> <p>12 bunkers in Rotterdam, then you only have to use a</p> <p>13 low sulphur fuel oil until you enter the</p> <p>14 Mediterranean. So until you use it, bunkers you</p> <p>15 have taken on board it may take the whole round</p> <p>16 trip through Asia to come back to the next low</p> <p>17 emission area.</p> <p>18 So it will be difficult for customers</p> <p>19 like Hapag-Lloyd to ascertain quality issues here</p> <p>20 within 60 days and that's what we agreed. Okay.</p> <p>21 Since you're not going to use that on probably the</p> <p>22 next 30 days, we agree that you are still after</p> <p>23 60 days you can file a claim against O.W. Bunker</p> <p>24 if you find that low sulphur fuel oil not within</p> <p>25 specification.</p>
<p style="text-align: right;">Page 111</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 So, as far as you understand, this</p> <p>3 contract did not deal with spot transactions or</p> <p>4 did deal with spot transactions?</p> <p>5 A. Yes. This contract was a one-year</p> <p>6 contract to supply all their demand in ARA.</p> <p>7 Q. Can you please take a look at Page 17</p> <p>8 of 76, which is the second page, and do you see on</p> <p>9 the left-hand side where it says, "max claim</p> <p>10 notice period"?</p> <p>11 A. Yes.</p> <p>12 Q. Can you take a moment just to read</p> <p>13 the entry to the right of that and what it says</p> <p>14 there?</p> <p>15 A. Yes. I'm aware of that clause.</p> <p>16 Please ask the question.</p> <p>17 Q. So just so I can make the record</p> <p>18 clear, what it states is "Sixty calendar days of</p> <p>19 the date of delivery for term contracted low</p> <p>20 sulphur fuel oil supplied in Antwerp or Rotterdam.</p> <p>21 Thirty calendar days of the date of delivery for</p> <p>22 supplies in all remaining ports worldwide."</p> <p>23 So Mr. Lehsten, is there -- to your</p> <p>24 understanding is there a reason why there is a</p> <p>25 separate calendar date period for claims for ports</p>	<p style="text-align: right;">Page 113</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 Q. Understood. Understood.</p> <p>3 Earlier do you recall your testimony</p> <p>4 and I believe it was Mr. Letourneau who had</p> <p>5 asked -- was asking you the question, but you had</p> <p>6 said that depending on certain customer demands</p> <p>7 the O.W. group would agree to other standard terms</p> <p>8 and conditions other than the O.W. Bunker Group's</p> <p>9 terms and conditions. Do you recall that</p> <p>10 testimony?</p> <p>11 A. Yes.</p> <p>12 Q. Can you please just take a look at</p> <p>13 where on the same page we were just looking at</p> <p>14 where it says, "Terms and conditions. Hapag-Lloyd</p> <p>15 AG standard terms and conditions. Version 2014 to</p> <p>16 apply."</p> <p>17 And then after that it has an</p> <p>18 "(Version 7.11.3849.0015623934)."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Would this contract fall within your</p> <p>22 understanding of your testimony earlier that</p> <p>23 Hapag-Lloyd had demanded that O.W. agree to its</p> <p>24 terms, meaning Hapag-Lloyd's terms and conditions,</p> <p>25 for this contract?</p>

<p style="text-align: right;">Page 114</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 A. That was a condition to -- to be</p> <p>3 reseller for them.</p> <p>4 Q. Can you repeat that, please?</p> <p>5 A. The condition dealing or selling to</p> <p>6 Hapag-Lloyd's was that we accept their terms and</p> <p>7 conditions; not only in contracts, on all</p> <p>8 deliveries.</p> <p>9 Q. So Hapag-Lloyd -- in order to do</p> <p>10 business with Hapag-Lloyd, O.W. Germany was</p> <p>11 required to accept Hapag-Lloyd's conditions not</p> <p>12 only for spot deals, but also for contracts like</p> <p>13 these?</p> <p>14 MR. HEILIG: Objection.</p> <p>15 MR. FERNANDEZ: Objection to form.</p> <p>16 A. For all deals. For all deals.</p> <p>17 Q. For all deals. Okay.</p> <p>18 Can you please turn to the last page</p> <p>19 of this document? It's Page 22 of 76.</p> <p>20 A. Yes.</p> <p>21 Q. Do you see in Clause 18 titled "Law</p> <p>22 and Arbitration." If you go towards the bottom,</p> <p>23 there's a sentence that begins, "German law shall</p> <p>24 apply on the 'fuel' contract."</p> <p>25 Do you see that sentence?</p>	<p style="text-align: right;">Page 116</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 negotiating this contract, correct?</p> <p>3 A. Yeah. All long-lasting contracts,</p> <p>4 right, I negotiate with Hapag-Lloyd but not the</p> <p>5 spot business.</p> <p>6 Q. Not the spot business. Okay.</p> <p>7 A. No, not the day-to-day spot business.</p> <p>8 Q. Got it.</p> <p>9 But again, those spot deals would</p> <p>10 fall within the fuel contract that -- as it's</p> <p>11 referred to in this -- on this page, correct? Is</p> <p>12 that your testimony?</p> <p>13 A. I'm not sure I understand. The spot</p> <p>14 business was simply given to the spot inquiries</p> <p>15 were given to O.W. Bunker Germany salesperson and</p> <p>16 they were handling it day-to-day. The contract</p> <p>17 sales, right? They passed on the next delivery</p> <p>18 they required for the ship in ARA and that he had</p> <p>19 the supplies.</p> <p>20 On the contract, you're basing not ó</p> <p>21 you have set the terms right, you have set the</p> <p>22 prices. You're not negotiating like on a spot</p> <p>23 deal. We're just performing the contract.</p> <p>24 So that's more administration work</p> <p>25 you can say. And then you have the spot deals</p>
<p style="text-align: right;">Page 115</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 A. There's "German law shall apply on</p> <p>3 the --"</p> <p>4 Yes.</p> <p>5 Q. What is your understanding of the</p> <p>6 "fuel contract" in quotation marks there?</p> <p>7 A. Fuel contract is any contract. Could</p> <p>8 be part of -- on a contract sales, could be spot</p> <p>9 deal.</p> <p>10 Q. So it's not limited to deals that</p> <p>11 have been consummated under this agreement,</p> <p>12 correct?</p> <p>13 A. No. It's on all deals. All terms</p> <p>14 and conditions will apply.</p> <p>15 Q. So your understanding is that fuel</p> <p>16 contract means all deals with Hapag by O.W.</p> <p>17 Germany?</p> <p>18 A. Yes, exactly.</p> <p>19 Q. Okay. And just to confirm, it is ó</p> <p>20 O.W. Germany has their place of business in</p> <p>21 Hamburg, Germany, correct, or did at the time that</p> <p>22 this was entered?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. That was -- you said you did</p> <p>25 negotiate this -- had personal involvement</p>	<p style="text-align: right;">Page 117</p> <p>1 - GOTZ LEHSTEN -</p> <p>2 where they ask you for particular delivery in a</p> <p>3 certain port and then, on that day, they will fix</p> <p>4 a deal or they lose it.</p> <p>5 Q. But in either situation that you just</p> <p>6 described, the spot deal or the ARA deals, the ó</p> <p>7 O.W. Germany would be conducting business with</p> <p>8 Hapag -- basis Hapag-Lloyd's terms and conditions;</p> <p>9 is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And was it the intent of O.W. Germany</p> <p>12 to have German law apply to those contracts in</p> <p>13 those deals with Hapag?</p> <p>14 A. No. We actually don't like German</p> <p>15 law here, but it was a tradition, right? And</p> <p>16 since adapt -- suppliers have accepted their terms</p> <p>17 and conditions, it was a matter of being</p> <p>18 competitive on the terms and conditions. So we</p> <p>19 agreed or accepted without really wanting it. If</p> <p>20 that makes sense. It was a commercial decision.</p> <p>21 Q. Correct. So it was a commercial</p> <p>22 decision to get the business from Hapag to do the</p> <p>23 deals under their terms and conditions which</p> <p>24 require German law, correct?</p> <p>25 A. Yes, that's correct.</p>

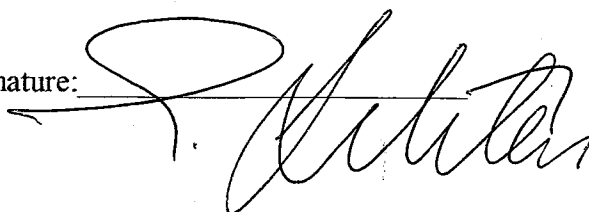
ERRATA SHEET

S.D.N.Y. Civil Action Nos. 14-cv-9542, 14-cv-9949, 14-cv-10027, and 15-cv-6718 (VEC)

Witness: Götz Lehsten

Deposition Date: February 23, 2016

Pages: Lines	Change	Reason
34:15	Change "Warborg" to "Aalborg"	Transcription error
42:19-20	Change "need to develop the business" to "wanted to grow the business and develop our market share"	Grammar/translation/clarification
42:20-22	Change "And, of course ... oil prices" to "Liquidity was key for volume growth and development, and oil prices had an influence on overall liquidity"	Transcription error/grammar/translation/clarification
42:22	Change "End" to "At the end"	Grammatical correction
43:6-7	Change "have probably used much less money as" to "employed much less capital compared to"	Grammar/translation/clarification
44:2	Change "terminal" to "turnover"	Transcription error
46:15	Change "terminal" to "trading"	Transcription error
46:16	Change "terminal" to "trade"	Transcription error
71:25	Change "claim" to "client"	Transcription error
73:8	Change "Klaus" to "Claus"	Spelling error
110:15	Change "first" to "fourth"	Transcription error
117:15	Change "tradition" to "condition"	Transcription error
125:17	Change "Warborg" to "Aalborg"	Transcription error
125:23	Change "Warborg, that's W-A-R-B-O-R-G" to "Aalborg, that's A-A-L-B-O-R-G"	Transcription error

Date: 15.4.16Signature: 

Nr. 27 der Urk. Rolle für das Jahr 2016

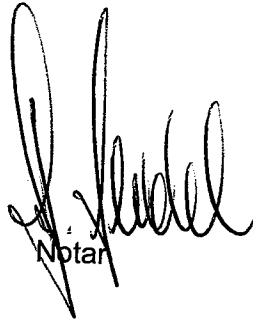
Vorstehende, vor mir vollzogene Namensunterschrift des

Götz Dieter Lehsten, geb. am 20.03.1962,
wohnhafte Am Hohen Ufer 21, 23730 Neustadt in Holstein
- ausgewiesen durch Personalausweis -

beglaubigte ich hiermit.

Der Notar fragte den Beteiligten, ob er oder eine Person, mit der sich der Notar zur gemeinsamen Berufsausführung verbunden hat in der Angelegenheit, die Gegenstand der Beglaubigung ist, außerhalb seiner Amtstätigkeit bereits tätig war oder ist, soweit sie nicht im Auftrag aller Beteiligten ausgeübt wurde. Der Beteiligte erklärte, dass dies nicht der Fall ist.

Neustadt in Holstein, den 15.04.2016


Notar

— LEERRAUM —
Landgericht Lübeck

- LEERSEITE -
Landgericht Lübeck



APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland

Diese öffentliche Urkunde

2. ist unterschrieben von _____

Dr. Hauke Seidel

3. in seiner Eigenschaft als Notar

4. sie ist versehen mit dem Siegel des

Notars Dr. Hauke Seidel in Neustadt i. H.

Bestätigt

in Lübeck

6. am 21. April 2016

7. durch den Präsidenten des Landgerichts Lübeck

8. unter Nr. 910 a – 504/2016

9. Siegel

10. Unterschrift
in Vertretung
Hartmut Schneider
Hartmut Schneider